COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
P.O.E.M. and F.A.S.M. v. Denmark

Communication No. 22/2002

19 March 2003

CERD/C/62/D/22/2002*

ADMISSIBILITY

Submitted by: P.O.E.M. and F.A.S.M. (represented by counsel)

Alleged victim: The petitioner

State party: Denmark

Date of communication: 8 August 2001 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 19 March 2003,

Having concluded its consideration of communication No. 22/2001, submitted to the Committee under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into consideration all written information made available to it by the author and the State party,

Bearing in mind rule 95 of its rules of procedure requiring it to formulate its opinion on the communication before it,

Adopts the following:

Decision on admissibility

1. The authors of the communication (hereafter, the petitioners), dated 8 August 2001, are POEM (Umbrella Organization for the Ethnic Minorities), and FASM (Association of Muslim Students). They claim a violation by Denmark of article 2, paragraph 1 (d), article 4 and article 6 of the Convention. They are represented by counsel.

The facts as presented by the petitioners

2.1 The first petitioner, the Umbrella Organization for the Ethnic Minorities (hereafter, POEM), is a Danish organization that promotes ethnic equality in all spheres of society including through full civil and political rights for ethnic minorities. The organization currently comprises 30 members representing most of ethnic and national minorities in the State party.

2.2 The second petitioner, the Association of Muslim Students (hereafter, FASM), is also a Danish organization that raises awareness on Muslim issues and deals with the negative effects caused by - so called - Islamophobic politicians and the media on the image of Islam. The organization currently comprises more than 100 members, all students and practising Muslims students who, for the most part, were born and raised in Denmark.

2.3 POEM represents a number of Muslim organizations and other organizations which, although not Muslim, comprise members of ethnic and national groups with a Muslim background. FASM is an all-Muslim organization. Therefore, when Islamophobic and other prejudicial statements against Muslims are made public, both the petitioners and their members, including the non-Muslims, are affected.

2.4 The incident of racial discrimination raised by the petitioners relates to a statement made by the leader of the Danish People's Party (Dansk Folkeparti, hereafter DPP) and Member of Parliament, Pia Kjærsgaard, on 19 June 2000 in her weekly newsletter which was disseminated on the party's web site and through a press release:

> Behind this lurks the phenomenon which becomes ever more obvious in all its horror: that the multiculturalization of Denmark brings trouble in its train like gang and group formation, mass rape and complete indifference to the principles on which the Danish legal system is built.
> …

The phenomenon of mass rape is also new in a Danish context and is linked with a cultural perception of Danish girls as prostitutes who can be defiled without shame, while the same boys and guys are brought up to murder a sister if she breaches the family and cultural codes.

2.5 On 20 June 2000, the Documentation and Advisory Centre on Racial Discrimination (DRC) reported the statement to the Copenhagen Police, alleging a violation of section 266 (b) of the Criminal Code (hereafter, section 266 (b)).[1]

2.6 By letter of 21 July 2000, the Copenhagen Police informed the DRC that the case was discontinued. This decision indicated that, according to the *travaux préparatoires* of the provision, the purpose of section 266 (b) is neither to limit the topics that can make the object of a political debate nor to decide the way these topics are addressed. Political statements, although they may be perceived by some as offending, are part of dialectic where, traditionally, there are wide limits to the use of generalization and simplified allegations. The above-mentioned weekly newsletter consists in an observation on the scale of penalties for crimes of violence, which is legitimate in a

political debate. Finally, although the statement could be considered as offensive, an important weight should be given in the present case to considerations related to the freedom of expression and of political debate.

2.7 By letter of 21 August 2000, the DRC requested that the case be brought before the Regional Public Prosecutor. The DRC argued that statements similar to that made by Pia Kjærsgaard had led to convictions and that neither the *travaux préparatoires* of section 266 (b) nor article 4 of the Convention provided for an extended freedom of expression for Members of Parliament or for observations made in a political debate. The petitioners are therefore of the opinion that statements forming part of a serious debate should be assessed regardless of whom has made them.

2.8 By letter of 31 August 2000, the Regional Public Prosecutor upheld the decision of the Copenhagen Police. He stressed that he had carefully considered the balance between the insulting character of the statement and the right to freedom of expression and that it must be accepted, to a certain degree, that, in order to secure a free and critical debate, statements may be offending to individuals or groups. Regardless of the degrading and insulting character of the statement for individuals of a different cultural background, the allegations made in the statement are not serious enough to justify a derogation from the freedom of expression.

2.9 By letter of 4 October 2000, the DRC wrote to the Director of Public Prosecutions and requested a review of the Regional Public Prosecutor's decision of 31 August 2000. The DRC also requested an opinion on the question of the existence of an extended freedom of expression for Members of Parliament and for observations being made in a political debate. The DRC further asked whether the Regional Public Prosecutor's decision was consistent with the Danish judicial practice and obligations under the Convention.

2.10 By letter of 8 February 2001, the Director of Public Prosecutions decided that there were no grounds for reviewing the decision of the Regional Public Prosecutor.

The complaint

Exhaustion of domestic remedies

3.1 The petitioners argue that, according to section 749, paragraph 1 of the State party's Administration of Justice Act, the police decides whether it will investigate the reported incidents. The decision may be referred to the Regional Public Prosecutor and his/her decision is final. Nevertheless, the State party itself stated in its fourteenth periodic report to the Committee that all cases related to section 266 (b) should be notified to the Director of Public Prosecutions. The petitioners have thus made such a notification in order to exhaust all domestic remedies.

3.2 The petitioners also contend that a direct legal action against Pia Kjærsgaard would not be effective in the absence of further investigation by the police or Regional Public Prosecutor. Moreover, the State party's Eastern High Court decided on 5 February 1999 that an incident of racial discrimination does not in itself imply a violation of the honour and reputation of a person under section 26 of the Act of Civil Liability.

Alleged violation of article 2, paragraph 1 (d) together with article 6

3.3 The petitioners allege that the State party has violated its obligations under article 2, paragraph 1 (d) taken together with article 6 of the Convention because, the Director of Public Prosecutions having the exclusive competence to initiate legal action in this type of incident, the alleged victims of such an incident are not entitled to bring the case before a court, and have therefore no means of redress, if the Director of Public Prosecutions discontinues a case.

3.4 The petitioners refer to the decision in case No. 4/1991 (*L.K. v. the Netherlands*) where the Committee emphasized that the State parties have a positive obligation to take effective action against reported incidents of racial discrimination.

3.5 Referring also to the fourteenth periodic report of the State party to the Committee, the petitioners complain that while all cases in which a provisional charge has been brought under section 266 (b) must be submitted for decision to the Director of Public Prosecutions, those that are rejected without a provisional charge are only notified to the same authority. Moreover, the petitioners contend that there is, in the State party's procedure related to acts of racial discrimination, an inequality of arms, because in cases where charges have been brought, both the Regional Public Prosecutor and the Director of Public Prosecutions have a right to review the decision, while in cases where no charge is brought, the case is only brought to the Regional Public Prosecutor.

Alleged violation of article 2, paragraph 1 (d) together with articles 4 and 6

3.6 The petitioners allege that the State party has violated its obligations under article 2, paragraph 1 (d) taken together with articles 4 and 6 of the Convention because, the decision of the Director of Public Prosecutions implying that the initial decision of the Copenhagen Police is in compliance with article 266 (b), the State party allows an extended right to freedom of expression for Members of Parliament and for observations being made during a political argumentation, regardless whether statements are racist or prejudicial.

3.7 In this regard, the petitioners point out to the State party's thirteenth periodic report where it was stated:

> 24. Section 266 (b) of the Penal Code, which is described in detail in Denmark's last periodic report (paras. 34-41), was amended by Act No. 309 of 17 May 1995 with the addition of a new subsection 2, according to which it must be considered an aggravating circumstance when meting out the punishment "that the count is in the nature of propaganda". The amendment entered into force on 1 June 1995.
>
> 25. During the readings of the bill in the Danish parliament (Folketinget) it was declared that in these especially aggravated cases the prosecutors should not in future exhibit the same restraint with regard to prosecuting as previously.

> 26. Whether "propaganda" is present in a specific case will depend on an overall assessment stressing in particular whether there has been a systematic dissemination of discriminating statements, etc., including dissemination to foreign countries, with a view to influencing public opinion. It could speak in favour of referring a count to section 266 (b) (2) if the violation was committed by several persons jointly, especially if the persons in question belong to the same party, association or other organization, and manifestations of the relevant nature form part of the activities of the organization in question. Also, a more extensive dissemination of statements may speak in favour of applying section 266 (b) (2). In this respect it is relevant whether the statements were put forward in a medium involving greater dissemination, for example a printed publication, radio, television or another electronic medium.

3.8 In order to illustrate the State party's practice in this regard, the petitioners explain that the founder of the extreme right wing "Progress Party" (Fremskridtsparteit) Mogens Glistrup, although he made continuous allegations that could have fallen under section 266 (b), was never charged under the said provision before he left the Parliament. On 23 August 2000, no longer a Member of Parliament, Mogens Giltrup was convicted by the Supreme Court under section 266 (b) (1) to seven days conditional imprisonment for racist allegations made on television but was not convicted under section 266 (b) (2). The petitioners underline that the Court then held that the consideration of an extended right to freedom of expression for politicians concerning controversial public matters could not constitute a basis for acquitting the defendant.

3.9 With regard to Pia Kjærsgaard, the petitioners argue that, on 27 August 1998, she wrote the following statement in a weekly newspaper:

> The majority of our foreign citizens come from Africa and Asia, and this group is by and large Mohammedan. […] and in addition to this comes a long series of expenses for aliens, such as expenses to maintain public law and order and security. […] I maintain the point that the expenses incurred by aliens - and not the private consumption of Danish citizens - is the ultimate and decisive cause of the destruction of the Danish Welfare State. […] Immigrants are to a large extent not capable of supporting themselves, just as aliens are far more criminal than the average population.

3.10 In another weekly newsletter of 25 April 2000, where she compared Muslim parliamentary candidates with Lenin who used the support of minor socialist parties and brutally crushed them once in power, Pia Kjærsgaard held:

> Thus a fundamentalist Muslim does in fact not know how to act [in dignity and in a cultivated way] in accordance with Danish democratic traditions. He simply does not have a clue about what it means. Commonly acknowledged principles such as speaking the truth and behaving with dignity and culture - also towards those whom you do not sympathize with - are unfamiliar ground to people like of M.Z.

3.11 By contrast, a few members of the youth branch of the DPP were charged with violation of section 266 (b) for having published the following ad: *Mass rapes - gross violence - insecurity -*

forced marriages - suppression of women - gang crime. That is what a multi-ethnic society has to offer us. Is that what you want?

3.12 The work of the Progress Party and of the DPP being to promote a restrictive immigration policy - particularly concerning Muslims - mainly based on Islamophobia since three decades, the petitioners consider that it constitutes propaganda to racial hatred against Muslims in Denmark. It is thus the opinion of the petitioners that when the State party grants an extended freedom of expression to parliamentarians, who are protected from prosecutions, it allows racist propaganda and does not provide Muslims with sufficient protection.

Alleged violation of articles 4 and 6 of the Convention

3.13 The petitioners allege that the State party has violated its obligations under articles 4 and 6 of the Convention because, the Copenhagen Police having failed to carry out a proper investigation, the petitioners have been deprived of the opportunity to establish whether their rights under the Convention had been violated. The State party has therefore failed to provide the petitioners with effective protection against racial discrimination.

3.14 Referring to case No. 16/1999 (*Kashif Ahmad v. Denmark*), the petitioners stress that while the incidents have been reported on 20 June 2000, the decision of the police was transmitted a month later, on 21 July 2000. Similarly, the Attorney-General decided to uphold the police's decision 10 days after the case was brought to his attention by the DRC. The petitioners argue that it is highly unlikely that the Regional Public Prosecutor could investigate the matter and carry out investigation in 10 days, in particular, in order to assess the existence of "propaganda", to investigate all previously reported incidents concerning Pia Kjærsgaard. They further mention that they have never been questioned by the authorities in relation to their complaint.

3.15 To further support this allegation, the petitioners emphasize that the Regional Public Prosecutor has not responded properly to the different arguments developed in the complaint, the decision merely referring to the Copenhagen Police's decision and reproducing almost standard paragraphs. This demonstrates that the Regional Public Prosecutor did not investigate the matter.

Alleged general violation of the Convention

3.16 The petitioners argue that the State party has failed to comply with the principles of the Convention as a whole because it provides for more extensive protection for victims of defamation than for victims of racial discrimination.

3.17 While according to the Public Prosecution, political statements of a similar nature to that of the present case should be seen as legitimate contributions to the general political debate, the petitioners stress that, by contrast, a journalist, Lars Bonnevie, who wrote that Pia Kjærsgaard was promoting "apparent racist views" was convicted of defamation and sentenced to a fine and compensation.

3.18 In conclusion, the petitioners request the Committee to recommend to the State party to carry

out a full investigation of this case and pay appropriate compensation to the victims.

Observations by the State party

4.1 By submission of 28 January 2002, the State party made its observations on the admissibility and merits of the case.

On the admissibility

4.2 The State party considers that the communication should be declared inadmissible ratione personae under article 14, paragraph 1, of the Convention because the petitioners are legal persons and not individuals or groups of individuals. It refers in this respect to the jurisprudence of the Human Rights Committee in cases Nos. 502/1992 and 737/1999. Moreover, the fact that the petitioners comprise a certain number of members and work for the interests of Muslims and other ethnic minorities does not entitle them to submit a communication under article 14 of the Convention.

4.3 Moreover, the petitioners have not submitted powers of attorney from one or more individuals claiming to be victims of a violation and authorizing them to submit such a communication.

4.4 Finally, the State party argues that the petitioners have not participated in the domestic proceedings. The report of 20 June 2000 was only made by the DRC who later on appealed to the Regional Public Prosecutor on behalf of seven named individuals.

On the merits

Alleged violation of article 2, paragraph 1 (d) together with article 6

4.5 With regard to the alleged violation of article 2, paragraph 1 (d) together with article 6, the State party is of the opinion that it cannot be inferred from the Convention that investigations should be carried out in situations which do not require it and consider that the Danish authorities have therefore fulfilled their obligations.

4.6 Furthermore, the State party considers that although proceedings in cases of alleged racial discrimination have to be carried out in compliance with the provisions of the Convention, the Convention does not specify which authority should decide to initiate prosecution or at what level of the hierarchy the decision should be taken.

4.7 For the same reasons, the State party argues that the notification of the case to the Director of Public Prosecutions cannot raise an issue under the Convention and has the only aim of ensuring a uniform prosecution practice and to collect case law in the field.

Alleged violation of article 2, paragraph 1 (d) together with articles 4 and 6

4.8 With regard to the alleged violation of article 2, paragraph 1 (d) together with articles 4 and 6,

the State party contends that article 4 of the Convention provides that State parties undertake to declare any dissemination of ideas based on racial superiority or hatred an offence punishable by law but that State parties shall, at the same time, act according to article 19 of the Universal Declaration of Human Rights as well as article 5 (d) (viii) of the Convention.

4.9 The State party considers that the allegations made by the petitioners according to which the absence of conviction of Mogens Glistrup under section 266 (b) (2) implies that racist propaganda is accepted in Denmark was not substantiated, as the petitioners do not refer to particular incidents that have been reported to the police without any result. Moreover, in relation with the Supreme Court's judgement referred to by the petitioners, the State party indicates that since the charge under section 266 (b) (2) have been dismissed on procedural grounds, the judgement cannot be considered as reflecting an acceptance in Denmark of racist propaganda made by politicians.

4.10 The State party further explains that section 266 (b) has been amended in order to comply with its obligations under article 4 of the Convention. Concerning the relationship to the freedom of expression, it is mentioned in the *travaux préparatoires* that:

> On the other hand it is necessary to give due regard to the freedom of expression which should apply, also in comments on racial groups, etc., and which article 4 of the Convention had in view, among other things by its reference to the Universal Declaration of Human Rights. In this regard, it should first be mentioned that, according to the draft, the criminal offences are limited to statements and other messages made "in public or with intent to dissemination to a wider circle". Furthermore, the statements referred to above - particularly the words "insulted or exposed to indignities" - must be interpreted to mean that offences of minor gravity are kept outside the criminal field. Outside the provision fall scientific theories put forward on differences of race, nationality or ethnicity, which presumably the Convention cannot have been intended to encompass. As mentioned above (…) there will probably also, concerning statements that were not made in a scientific context proper, but otherwise as part of an objective debate, be occasion to reckon with an area of impunity (emphasis added by the State party).

4.11 Therefore, the State party has to apply section 266 (b) taking into account the offender's right to freedom of expression as set forth in article 19 of the International Covenant on Civil and Political Rights and article 10 of the European Convention on Human Rights.

4.12 The State party refers thereafter to a number of cases decided by the European Court of Human Rights, stating that the latter attaches an important weight to freedom of expression, especially when expressions are made as part of a political or social debate. In the case *Jersild v. Denmark* concerning a journalist who had been convicted under section 266 (b) for having made racist statements, the European Court of Human Rights held that the protection against racist statements had to be balanced against the freedom of expression. Concerning the relationship with the Convention, the Court stated that:

> Denmark's obligation under article 10 [of the European Convention] must be interpreted, to the extent possible, so as to be reconcilable with its obligation under the United Nations

Convention. In this respect it is not for the Court to interpret the "due regard" clause in article 4 of the United Nations Convention, which is open to various constructions. The Court is however of the opinion that its interpretation of article 10 of the European Convention in the present case is compatible with Denmark's obligations under the United Nations Convention.

4.13 This balance is also made in the State party's case law. In the above-mentioned Supreme Court's case concerning Mogens Glitrup, the court found that Glistrup's statements could not objectively be justified and the extensive freedom of expression for politicians could not lead to acquittal in this case.

4.14 The State party then explains that the newsletter of 19 June 2000 was related to the level of punishment in case of rapes and gang rapes following the case of a 14-year-old girl who had been raped by several men of non-Danish ethnic background. The debate took place in the context of a proposed legislative amendment purporting to increase the punishment for rape committed by several perpetrators jointly and attracted great public interest.

4.15 The State party finds that the statement made by a Member of Parliament should be considered therefore as part of the public debate on this issue and are not of the same aggravated nature as the statements for which Mogens Glistrup was convicted by the Supreme Court.

4.16 The State party further considers that the content of the statement made in the newsletter is not disproportionate to the aim pursued, which is to take part in the debate on the issue of punishment for certain offences. The Copenhagen Police and the Regional Public Prosecutor made thus a correct balancing between article 4 of the Convention and the right to freedom of expression by deciding in advantage of the latter.

Alleged violation of articles 4 and 6 of the Convention

4.17 With regard to the alleged violation of articles 4 and 6 of the Convention, the State party considers that the question that had to be decided by the relevant authorities was whether Pia Kjærsgaard had violated section 266 (b) because of the statement made in the newsletter of 19 June 2000. It did not concern other statements from this person nor did it concern generally the principle of the scope of freedom of expression for Members of Parliament.

4.18 Concerning the obligation to investigate acts of racial discrimination, the State party, referring to a number of decisions taken by the Committee, considers that the investigation conducted by the police in the present case fully satisfied the obligations that can be inferred from the Convention. On the basis of the report made by the DRC, another report was drafted and no further investigative steps were taken because the decision consisted in a legal assessment of the content of the newsletter, i.e. whether it constituted a violation of section 266 (b).

4.19 The State party also indicates that the petitioners were not questioned because they were not part of the domestic proceedings and that neither the DRC nor the seven persons named by the latter were questioned because such interviews were not relevant for the investigation, as the

outcome of the case depended solely on a legal assessment.

4.2 The same argumentation is valid for the decision taken by the Regional Public Prosecutor.

4.21 Moreover, the State party considers that, since the statements were not considered to be in violation of section 266 (b) (1), neither the Copenhagen Police nor the Regional Public Prosecutor should consider whether propaganda in the sense of section 266 (b) (2) was involved, because this subsection only provides for an aggravating circumstance of acts under section 266 (b) (1).

Alleged general violation of the Convention

4.22 Concerning the alleged general violation of the Convention because individual victims of defamation would be better protected than groups of victims of defamation, degradation and insults, the State party contends that the object of the legal provisions on defamation is to protect the honour of specific individuals against offensive words and acts while the object of section 266 (b) is to protect groups of persons who are threatened, insulted or exposed to indignities on the grounds of race, colour, national extraction, ethnic origin, religion or sexual orientation. The two provisions are applied differently in view of their different contents and purposes.

4.23 Furthermore, both provisions complement each other as, for example, an individual can be charged for defamation even if the conditions for a charge under 266 are not met.

Author's comments

5.1 By submission of 14 May 2002, the petitioners made their comments on the State party's observations.

5.2 With regard to the admissibility of the communication, the petitioners are of the opinion that article 14 of the Convention does not prevent non-governmental organizations to submit communications to the Committee. Contesting that POEM and FASM are legal persons, they argue that these organizations are non-governmental organizations which represent a group of people and are thus entitled to submit a communication under article 14.

5.3 The petitioners further contend that the objective of article 14 is to exclude communications from individuals who are not subject to the jurisdiction of the State party. The petitioners consider also that article 14 of the Convention should be interpreted along the terms of article 34 of the European Convention of Human Rights,[2] which expressly provides for the right for non-governmental organizations to apply before the European Court of Human Rights.

5.4 Alternatively, the petitioners note that the powers of attorney from individual members of POEM and FASM, submitted together with their present comments, make clear that those individuals as well as the organizations that represent them appointed DRC to submit the communication to the Committee.

5.5 With regard to the alleged violation of article 2, paragraph 1 (d) together with article 6, the

petitioners maintain that cases concerning section 266 (b) are treated differently whether the police intends to dismiss a report or to prosecute.

5.6 The petitioners explain that if the Regional Public Prosecutor had decided to charge Pia Kjærsgaard, she would have been entitled to receive a third opinion on the matter since the Director of Public Prosecutions takes the final decision in such cases. By contrast, the alleged victims do not have the same right if the Regional Public Prosecutor decides to dismiss the case. The Director of Public Prosecutions will only be notified of the decision to dismiss. In the opinion of the petitioners, this constitutes a differential treatment that is incompatible with the Convention and, in particular, with article 2, paragraph 1 (d).

5.7 With regard to the alleged violation of article 2, paragraph 1 (d) together with articles 4 and 6, the petitioners agree with the State party and the European Court of Human Right's decision in *Jersild v. Denmark* that a fair balance has to be assessed between freedom of expression and protection against racist statements. However, in the present case, it appears that the Regional Public Prosecutor found that the statement was degrading and insulting individuals with another ethnic background but that it was not severe enough to limit the freedom of expression. The petitioners consider that the Regional Public Prosecutor should have decided that the statement fell under section 266 (b), alongside a precedent judgement of 10 April 1996 in a similar case. In the present case, freedom of expression could not constitute a justification to dismiss the case.

5.8 The petitioners therefore conclude that politicians in Denmark are entitled to make statements that fall under section 266 (b) without being charged while others, non-politicians, would be charged for similar statements. The petitioners asked the Director of Public Prosecutions to comment on this point of view which they consider as having no justification and being contrary to article 2, paragraph 1 (d), article 4 and 6 of the Convention.

5.9 The petitioners further indicate that, while they do not dispute that the European Court gives a wider margin to freedom of expression for politicians, the same holds true for journalists. In this regard, they refer again to the case of Lars Bonnevie who was convicted of defamation on 29 April 1999 for having claimed that Pia Kjærsgaard was promoting "apparent racist views". In the same line, the petitioners refer to a decision of the Court of Arhus which convicted a politician, Karen Sund, for having stated that "[o]ne cannot cooperate with the Danish People's Party because the leader of the party has a racial point of view".

5.10 Finally, the petitioners contend that it is for the courts to draw the line between freedom of expression and protection from racist remarks and not the police or the Regional Public Prosecutor. This is even more justified, because of the independence of the judiciary, in cases where the alleged offender is a politician.

5.11 With regard to the alleged violation of articles 4 and 6, the petitioners reiterate that the case has not been investigated thoroughly and individually.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee on the Elimination of Racial Discrimination must decide, pursuant to article 14 of the Convention and rules 86 and 91 of its rules of procedure, whether or not the communication is admissible.

6.2 The Committee notes the State party's argument that none of the petitioners were plaintiffs in the domestic proceedings and that the report to the Copenhagen Police was only submitted by the DRC.

6.3 The Committee considers that it is a basic requirement under article 14, paragraph 7 (a) that domestic remedies have to be exhausted by the petitioners themselves and not by other organizations or individuals. The Committee finds therefore that communication is inadmissible under article 14, paragraph 7 (a) of the Convention.

7. Notwithstanding the above, the Committee calls the State party's attention to the content of paragraph 115 of the Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban (South Africa) on 8 September 2001, which "underlines the key role that politicians and political parties can play in combating racism, racial discrimination, xenophobia and related intolerance and encourages political parties to take concrete steps to promote equality, solidarity and non-discrimination in society, inter alia by developing voluntary codes of conduct which include internal disciplinary measures for violations thereof, so their members refrain from public statements and actions that encourage or incite racism, racial discrimination, xenophobia and related intolerance".

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

* Made public by decision of the Committee on the Elimination of Racial Discrimination.

Notes

[1] Section 266 (b) of the Danish Criminal Code reads:

> 1. Any person who publicly or with the intention of disseminating it to a wide circle of people, makes a statement or imparts other information threatening, insulting or degrading a group of persons on account of their race, colour, national or ethnic origin, belief or sexual orientation shall be liable to a fine or imprisonment for any term not exceeding two years.
>
> 2. When the sentence is meted out, the fact that the offence is in the nature of propaganda activities shall be considered an aggravating circumstance.

[2] Article 34 of the European Convention on Human Rights reads:

The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.